

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 21927 of 2006(I)

OS.80/2004 of MUNSIFF COURT, PAYYOLI

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PETITIONER:

1. ASARIKANDI KADEESA, W/O. AMMED,
AGED 60 YEARS, CHERAPURAM AMSOM, DESOM,
VADAKARA TALUK.
2. DAUGHTER THARAMMAL SULAIKHA,
SWASTHAM, AGED 37 YEARS, CHERAPURAM AMSOM, DESOM,
VADAKARA TALUK.
3. SISTER KUNYIL SAFIYA, AGED 36 YEARS,
SWASTHAM, CHERAPURAM AMSOM, DESOM, VADAKARA TALUK.
4. AMMARATH RAHIYANATH, D/O. AMMAD,
SWASTHAM, AGED 26 YEARS, THIRUVALLUR AMSOM, DESOM,
VADAKARA TALUK.
5. KOMATH SAREENA, D/O. AMMAD,
SWASTHAM, AGED 23 YEARS, KUNNUMMAL AMSOM, DESOM,
VADAKARA TALUK.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA

RESPONDENTS:

1. PALONKARAYIL MAMI, D/O. AMMAD,
AGED 33 YEARS, SWASTHAM, VADAYAM AMSOM,
NITTOOR DESOM, VADAKARA TALUK.
2. ASARIKANDIYIL ISMAYIL, S/O. AMMAD,
AGED 28 YEARS, BUSINESS, CHERAPURAM AMSOM, DESOM,
VADAKARA TALUK.

BY ADV. SRI.P.K.SURESH KUMAR FOR R1

SRI.K.P.SUDHEER
SMT.PRIYA VIJAYAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Ext.P1:- True copy of the preliminary decree in OS 80/84 before the Munsiff/Magistrate Court, Payyoli dated 20-01-05.

Ext.P2:- True copy of the report dated 06-06-06 filed by the Commissioner.

Ext.P3:- True copy of the affidavit in support of the petition IA 312/06 in IA 77/06 in OS 80/04 before the Munsiff/Magistrate Court, Payyoli dt. 09-06-06.

Ext.P4:- True copy of the counter statement filed by first respondent dt.06-07-06.

Ext.P5:- The true copy of the order dated 31-07-06 in IA 312/06 in FDIA 77/06 in OS 80/04 before the Munsiff/Magistrate Court, Payyoli.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR, J.

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W.P. (C) NO.21927 OF 2006

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Dated this the 29th day of November, 2006

JUDGMENT

Petitioners are defendants 1 to 4 and 6 in O.S.80/04 on the file of Munsiff-Magistrate Court, Payyoli. FDIA 77/06 is filed for passing a final decree in accordance with the preliminary decree. A commissioner was appointed to divide the properties in accordance with the preliminary decree. Commissioner submitted a report and plan. Petitioners filed I.A.312/06, an application to remit the report back to the Commissioner contending that Commissioner has not properly identified and demarcated the properties, the extent shown by the Commissioner for the seven items of property as well as the valuation are not correct. Under Ext.P5 order, learned Munsiff dismissed the application which is challenged in this petition filed under Article 227 of Constitution of India.

2. On hearing learned counsel appearing for petitioners and respondents and considering the fact that it is a final decree application wherein seven items of properties are to be divided and separated in accordance with the preliminary decree, it is in the interest of justice to properly identify and demarcate the properties. In such circumstance, Ext.P5 order is quashed. Learned Munsiff is directed to remit back the report submitted by the Commissioner to file a fresh report in the light of the objection raised by petitioners. The court shall direct the Commissioner to complete the work expeditiously and shall also dispose the final decree application as expeditiously as possible. The court to direct the Commissioner to verify and submit the report, on the objections raised by other parties, if any also.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006